

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:06cv512**

**GERARD ECKHARDT,**

**Plaintiff,**

**Vs.**

**BANK OF AMERICA, N.A.**

**Defendant.**

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**ORDER**

**THIS MATTER** is before the court upon reassignment under 28, United States Code, Section 636(c). The court has closely reviewed the pleadings, the docket, and the Orders of Honorable Carl Horn, III, United States Magistrate Judge, and adopts all such prior Orders in full as law of the case.

In conducting such review, it stands out that defendant filed a Motion for Summary Judgment (#32) in February 2008, which was addressed in part by Judge Horn's last Order. After resolving a number of disputes that concerned evidentiary matters that would in turn touch on whether issues of material fact remain for trial, Judge Horn opined that defendant may wish to withdraw such motion, with leave to file a further motion after the close of discovery and before the dispositive motions deadline. Looking ahead, the undersigned fully concurs with such proposed course of action. As it stands now, it appears likely that defendant would need to file an

additional or further motion for summary judgment to account for the additional discovery (or attempts to locate such discovery) mandated by Judge Horn's Order. Rather than attempt to collate the February motion for summary judgment with a September supplemental motion, the undersigned believes one fully briefed motion would be much simpler. Further, a motion filed in February and not resolved until September or later is considered stale.

Finally, the court has reviewed other matters in the docket and it appears that the parties have already conducted mediation, nearly a year ago. In light of the additional discovery, the parties may wish to consider a supplemental mediated settlement conference after the close of discovery and before the new motions deadlines. Mediation is a very useful process in that it allows the parties to understand the strengths, weaknesses, and value of their case through an experienced neutral third party. The court would encourage all parties to closely consider the opinions and advice of the mediator if they elect to return to mediation.

## **ORDER**

**IT IS, THEREFORE, ORDERED** that defendant either withdraw its Motion for Summary Judgment (#32) without prejudice or provide notice of its intent to maintain such motion by June 27, 2008.

Signed: June 19, 2008

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

